TRANS-SUMMIT SDN BHD

v

CHUN NYOOK LIN (P)

COURT OF APPEAL, KUALA LUMPUR
DATO' SITI NORMA YAAKOB JCA
DATO' SHAIK DAUD MOHD ISMAIL JCA
DATO' ABU MANSOR ALI JCA
[CIVIL APPEAL NO: M-02-131 OF 1994]
7 JULY 1995

LAND LAW: *Private caveat – Removal – Whether respondent had any caveatable interest – Action for declaratory relief not affecting rights under the National Land Code – Whether could give rise to any caveatable interest in land – National Land Code s. 323(1).*

This was an appeal against the decision of the learned Judge refusing to remove a caveat lodged by the respondent on the ground that the respondent had a caveatable interest in the land in question. The facts showed that the appellant, the owner of the land, had wanted to develop the land, and to that end, had allegedly promised to enter into a joint-venture agreement with the respondent's company (Aiport Auto) to undertake the project. The appellant had backed out from the agreement and the respondent, thereupon, filed a suit in the High Court seeking for a declaration, *inter alia*, that there existed between them a valid and enforceable joint venture agreement over the land. Before the learned judges herein, the respondent contended that by virtue of the prayer in the civil suit, she had a caveatable interest over the land, citing in support thereof the Supreme Court in *Raju J a/l M. Kerpaya @ Jayaraman a/l M. Kerpaya v. Kwong Yik Bank Berhad & Anor.*

Held:

Per Siti Norma Yaakob JCA (delivering the judgment of the Court):

[1] The respondent's argument that her company's claim for a declaratory relief in the civil suit is sufficient to clothe her with the necessary interest entitling her to validly caveat the land is unsustainable. A thorough reading of *Raju's* case shows that not all declaratory reliefs can empower a person like the respondent to lodge a caveat in order to protect her interest. What the Supreme Court stated in *Raju's* case is that only declaratory relief affecting rights under the National land Code can justify a party entering a caveat to protect his land.

[2] In the instant case, the respondent's interest lies not in the land but in the profits that her company hopes to gain from the joint venture agreement with the appellant which is being challenged by the latter. As her interest is only monetary in nature she has no caveatable interest in

the land. She is not therefore entitled to have the private caveat lodged by her extended until after the disposal of the civil suit.

[3] On the facts, the balance of convenience also tilts in favour of the appellant being given a free hand to continue with the development of the land. If it later transpires that Airport Auto succeeds in the civil suit, it can be adequately compensated with damages.

[Appeal allowed. Private caveat ordered to be removed forthwith]

***[Bahasa Malaysia** Translation of Headnotes]*

***UNDANG-UNDANG TANAH:** Kaveat persendirian – Pembatalan – Samada responden mempunyai apa-apa kepentingan yang boleh dikaveatkan – Tindakan untuk relif pengisytiharan yang tidak menjejaskan hak-hak di bawah Kanun Tanah Negara – Samada boleh membangkitkan kepentingan terhadap tanah yang boleh dikaveat – Kanun Tanah Negara s. 323(1).*

Ini merupakan rayuan terhadap keputusan Hakim yang bijaksana kerana enggan membatalkan kaveat yang telah diserah-simpan oleh responden atas alasan bahawa responden mempunyai kepentingan yang boleh dikaveatkan dalam tanah yang dipersoalkan. Fakta-fakta menunjukkan bahawa perayu, yang merupakan tuanpunya tanah itu, hendak memajukan tanah tersebut, dan sehubungan dengan itu, telah dikatakan berjanji untuk memasuki satu perjanjian usaha-sama dengan syarikat responden (Airport Auto) untuk menjalankan projek tersebut. Perayu telah tidak mahu meneruskan perjanjian tersebut dan responden, tanpa berlengah lagi, telah memfailkan satu guaman dalam Mahkamah Tinggi memohon pengisytiharan, antara lainnya, bahawa wujud di antara mereka satu perjanjian usaha-sama yang sah dan berkuatkuasa atas tanah tersebut. Di hadapan Hakim-Hakim yang bijaksana di sini, responden menegaskan bahawa berdasarkan pohonan dalam guaman sivil di atas, beliau mempunyai kepentingan yang boleh dikaveatkan ke atas tanah dan bagi menyokongnya telah menyebut keputusan Mahkamah Agung dalam *Raju J a/l M. Kerpaya @ Jayaraman a/l M. Kerpaya v. Kwong Yik Bank Berhad & Anor.*

Diputuskan:

Oleh Siti Norma Yaakob HMR (menyampaikan penghakiman Mahkamah):

[1] Hujahan responden bahawa tuntutan syarikatnya untuk satu relif pengisytiharan dalam guaman sivil tersebut adalah memadai untuk memberikan kepentingan yang perlu untuk mengkaveatkan tanah tersebut dengan sahnya adalah tidak boleh dipertahankan. Membaca kes *Raju* dengan teliti akan menunjukkan bahawa bukan kesemua relif pengisytiharan boleh memberikan kuasa kepada seseorang seperti responden untuk menyerah-simpan kaveat bagi melindungi kepentingannya. Apa yang

dinyatakan oleh Mahkamah Agung dalam kes *Raju* adalah bahawa hanya relif pengisytiharan yang menjejaskan hak-hak di bawah Kanun Tanah Negara boleh memberi justifikasi kepada sesuatu pihak untuk memasukkan kaveat untuk melindungi tanahnya.

[2] Dalam kes semasa ini, kepentingan responden bukannya pada tanah tersebut tetapi dalam keuntungan yang syarikatnya berharap untuk perolehi daripada perjanjian usaha-sama dengan perayu yang mana merupakan perkara yang dicabar oleh pihak terkemudian. Oleh kerana kepentingannya adalah hanya bersifat wang, maka beliau tidak mempunyai kepentingan yang boleh dikaveatkan dalam tanah tersebut. Dan dengan itu, beliau tidak berhak untuk melanjutkan tempoh kaveat persendirian yang diserah-simpan olehnya sehingga guaman sivil tersebut selesai.

[3] Berdasarkan fakta, imbangan keselesaan juga memihak kepada perayu diberikan kebebasan untuk meneruskan pembangunan tanah tersebut. Jika kemudiannya didapati bahawa Airport Auto berjaya dalam guaman sivil tersebut, ianya boleh diberikan pampasan yang secukupnya untuk gantirugi.

[Rayuan dibenarkan. Kaveat persendirian dibatalkan segera]

Cases referred to:

Raju J a/l M. Kerpaya @ Jayaraman a/l M Kerpaya v. Kwong Yik Bank Bhd. & Anor [1994] 2 CLJ 695; [1994] 2 AMR 24 1220 ***(dist)***
Jit Kaur v. Parl Singh [1974] 2 MLJ 199 ***(refd)***
Wong Kuan Tan v. Gambut Development Sdn. Bhd. [1984] 2 MLJ 133 ***(cit)***
Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon & Ors. [1986] 1 MLJ 316 ***(cit)***

Legislation referred to:

National Land Code 1965, ss. 323(1), 329(1)

For the appellant – Wong Kim Fatt; M/s. Gulam & Wong
For the respondent – Hilary D'Cruz; M/s. S.K. Khoo & Tan Tian Tiok

JUDGMENT

Siti Norma Yaakob JCA:

The only issue raised in this appeal is whether the respondent has a caveatable interest in a piece of property which has been purchased by the appellant, that entitles her to lodge a private caveat in the first place. In the Court below, the trial Judge held that she has, in proceedings commenced by the appellant to have the caveat removed, and it is to appeal against the dismissal of the appellant's application to have the private caveat removed that the present appeal is founded.

In applications of this nature, three conditions have to be fulfilled:

(1) Whether the respondent has disclosed a caveatable interest under s. 323(1) of the National Land Code.

(2) Whether the evidence discloses a serious question to be tried.

(3) Whether the balance of convenience lies in favour of the caveat continuing to remain on the register.

The caveat in these proceedings is lodged against Lot 1915 held under Grant No. 3548, Mukim Durian Tunggal, Daerah Alor Gajah, Melaka. The land was originally registered in the name of Kumpulan Realty Melaka Sdn. Bhd., now under liquidation. Kumpulan Realty charged the land as security for a loan granted by Mayban Finance Berhad. When Kumpulan Realty defaulted, Mayban Finance as the chargee, decided to sell the land. This was achieved by Mayban Finance giving an option to purchase dated 4 September 1992, to a company known as Airport Auto Centre Sdn. Bhd. The respondent is a Director of Airport Auto.

As Airport Auto had no funds to purchase the land, it assigned all its rights under the option to the appellant by letter dated 5 October 1992. Mayban Finance had no objection to this arrangement and by a Court order dated 30 November, 1992, giving leave to the Official Receiver as the liquidator for Kumpulan Realty to sell the land, and a sale and purchase agreement dated 6 January 1993, executed by the Official Receiver as the liquidator for Kumpulan Realty (the vendor) with the appellant (the purchaser) and Mayban Finance (the chargee), the appellant purchased the land together with two other lots at the agreed price of RM1.1 million.

The appellant has every intention to develop all the three lots into a housing estate and it is the respondent's contention that her company, Airport Auto, would enter into a joint venture agreement with the appellant for that project. As evidence of this, the respondent produced an unsigned joint venture agreement which the appellant refused to execute. It was following the appellant's conduct in refusing to acknowledge Airport Auto as a partner of the housing project that the respondent lodged the caveat on 7 July 1993, to protect her company's interests in the land. At the same time, Airport Auto filed Malacca High Court Civil Suit No. 22-111-93 on 14 December 1993, against the appellant and Kumpulan Realty, praying for a number of reliefs, but as against the appellant, Airport Auto's principal reliefs are:

(1) for a declaration that between them there exists a valid and enforceable joint venture agreement over the land.

(2) that the appellant execute the joint venture agreement.

It is the respondent's contention that although Airport Auto has no contractual obligations with the appellant over the land, nevertheless she claims that by virtue of Airport Auto's prayer for a declaratory decree in the civil suit, she

has a caveatable interest over the land. For this she relies on the decision reached in the case of *Raju a/l M Kerpaya @ Jayaraman a/l Kerpaya v. Kwong Yik Bank Berhad & Anor.* [1994] 2 AMR 24 1220, where the Supreme Court held that "a person who is entitled to initiate an action for a declaratory decree affecting his rights under the National Land Code is just as entitled as a person seeking for a specific performance or an injunction to enter a caveat pending the disposal of his suit.

By analogy, the respondent argues that her company's claim for a declaratory relief in the civil suit is sufficient to clothe her with the necessary interest entitling her to validly caveat the land in question. This we do not agree, as a thorough reading of *Raju's* case shows that not all declaratory reliefs can empower a person like the respondent to lodge a caveat in order to protect her interest. What the Supreme Court stated in *Raju's* case is that only declaratory relief affecting rights under the National Land Code can justify a party entering a caveat to protect his interest. The Supreme Court had also affirmed an earlier decision reached in *Jit Kaur v. Parl Singh* [1974] 2 MLJ 199 that held that a "proposed action of a party to challenge the transfer of his land to another constituted sufficient ground for the entry of a private caveat". See also the case of *Wong Kuan Tan v. Gambut Development Sdn. Bhd.* [1984] 2 MLJ 113 and *Million Group Credit Sdn. Bhd. v. Lee Shoo Khoon & Ors.* [1986] 1 MLJ 316.

In the proceedings before us, what interest does the respondent possess? It is not in the land. That has already been validly sold. Her interest really lies in the profits that her company hopes to gain from the joint venture agreement with the appellant, which is being challenged by the appellant. The civil suit testifies to this. As her interest is only monetary in nature, she has therefore no caveatable interest over the land. She cannot continue to have the private caveat lodged by her extended until after the disposal of the civil suit.

The facts of this case are such that we cannot find any issue serious enough to warrant a trial. On the contrary, what we see is that the appellant is restrained by the presence of the caveat from developing the land, which forms one of three continuous lots that have been purchased by the appellant for the sole purpose of developing all three lots together into a housing estate. On the facts of this case, we consider that the balance of convenience tilts in favour of the appellant being given a free hand to continue with the development of the land together with the adjoining two lots. If it later transpires that Airport Auto succeeds in the civil suit, then it will be adequately compensated with the damages that it claims in that suit but to rely on the declaratory decree that it seeks in that suit as the basis for the lodgement of the caveat is a wrong assessment of the whole situation and to that end, we cannot support the finding of the trial Judge. On that conclusion, we allow this appeal with costs here and below and that the deposit be refunded to the appellant. Consequentially, there will also be an order to assess damages by

the Registrar of the High Court, Melaka to be paid by the respondent to the appellant under s. 329(1) of the National Land Code 1965. The private caveat Jilid 75 Folio 99 entered by the respondent against Lot 1915 is to be removed forthwith and the *ex parte* order for extension of the caveat is set aside.

Abu Mansor Ali JCA:

I have had the opportunity of reading the draft judgment of my sister, Dato' Siti Norma Yaakob JCA in this matter to which I concur.

Reported by W.A. Sharif